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Introduced by Sens. HOYLMAN, AVELLA, DILAN, GIANARIS, KENNEDY, LATIMER, PARKER, PERALTA, PERKINS, SANDERS, SAVINO, SERRANO, SQUADRON, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the family court act, in relation to establishing the child-parent security act; and to repeal section 73 and article 8 of the domestic relations law, relating to legitimacy of children born by artificial insemination and surrogate parenting contracts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The family court act is amended by adding a new article 5-C
2 to read as follows:

3 ARTICLE 5-C

4 CHILD-PARENT SECURITY ACT

5 PART 1. General provisions.

6 2. Judgment of parentage.

7 3. Child of assisted reproduction or artificial insemination.

8 4. Gestational agreement.

9 5. Payment to donors and gestational carriers.

10 6. Formation of legal parent-child relationship after birth of
11 child.

12 7. Miscellaneous provisions.

13 PART 1

14 GENERAL PROVISIONS

15 Section 581-101. Short title.

16 581-102. Purpose.

17 581-103. Definitions.

18 § 581-101. Short title. This article shall be known and may be cited
19 as the "child-parent security act".

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 § 581-102. Purpose. The purpose of this article is to legally estab-
2 lish a child's relationship to his or her parents.

3 § 581-103. Definitions. (a) "Artificial insemination" means insertion
4 of sperm into female reproductive organs by any means other than sexual
5 intercourse, including intrauterine insemination, with the intent to
6 cause a pregnancy.

7 (b) "Assisted reproduction" includes all fertility treatments in which
8 both eggs and sperm are handled. In the foregoing context, the term
9 includes, but is not limited to in-vitro fertilization and transfer of
10 embryos including donated gametes or donated embryos.

11 (c) "ART provider" means any entity which assists with assisted repro-
12 ductive technology.

13 (d) "Assisted reproductive technology" or "ART" is any medical or
14 scientific intervention, including, but not limited to, assisted repro-
15 duction, provided for the purpose of achieving live birth that results
16 from assisted conception. Assisted conception means the formation of a
17 human embryo outside the body with the intent to produce a live birth.

18 (e) "Child" means a live born individual of any age whose parentage
19 may be determined under this act or other law.

20 (f) "Collaborative reproduction" involves artificial insemination with
21 donor sperm and any assisted reproduction in which an individual other
22 than the intended parent provides genetic material or agrees to act as a
23 gestational carrier. It can include, but is not limited to, (1) attempts
24 by the intended parent to create a child through means of a gestational
25 arrangement, with or without the involvement of a donor, and (2)
26 assisted reproduction involving a donor where a gestational carrier is
27 not used.

28 (g) "Compensation" means payment of any valuable consideration for
29 time, effort, pain and/or risk to health in excess of reasonable medical
30 and ancillary costs.

31 (h) "Donor" means an individual who produces eggs or sperm used for
32 assisted reproduction or artificial insemination, whether or not for
33 consideration. Donor also includes an individual or individuals with
34 dispositional control of an embryo who provide it to another person for
35 the purpose of gestation and relinquishes all present and future
36 parental and inheritance rights and obligations to a resulting child.
37 The term does not include an intended parent who provides gametes to be
38 used for assisted reproduction or artificial insemination.

39 (i) "Embryo" means a cell or group of cells containing a diploid
40 complement of chromosomes or group of such cells, not a gamete or
41 gametes, that has the potential to develop into a live born human being
42 if transferred into the body of a woman under conditions in which
43 gestation may be reasonably expected to occur.

44 (j) "Embryo transfer" means all medical and laboratory procedures that
45 are necessary to effectuate the transfer of an embryo into the uterine
46 cavity.

47 (k) "Gamete" means a cell containing a haploid complement of DNA that
48 has the potential to form an embryo when combined with another gamete.
49 Sperm and eggs are gametes. A gamete may consist of nuclear DNA from one
50 human being combined with the cytoplasm, including cytoplasmic DNA, of
51 another human being.

52 (l) "Gamete provider" means an individual who provides sperm or eggs
53 for use in assisted reproduction or artificial insemination.

54 (m) "Gestational agreement" is a contract between intended parents and
55 a gestational carrier intended to result in a live birth where the child
56 will be the legal child of the intended parents.

1 (n) "Gestational carrier" means an adult woman, not an intended
2 parent, who enters into a gestational agreement to bear a child who will
3 be the legal child of the intended parents so long as she has not
4 provided the egg used to conceive the resulting child.

5 (o) "Gestational carrier arrangement" means the process by which a
6 gestational carrier attempts to carry and give birth to a child created
7 through assisted reproduction so long as the gestational carrier has not
8 provided the egg used to conceive the resulting child.

9 (p) "Health care practitioner" means an individual licensed or certi-
10 fied under title eight of the education law acting within his or her
11 scope of practice.

12 (q) "Intended parent" is an individual who manifests the intent as
13 provided in this act to be legally bound as the parent of a child
14 resulting from assisted reproduction or collaborative reproduction.

15 (r) "In-vitro fertilization" means the formation of a human embryo
16 outside the human body.

17 (s) "Medical evaluation" means an evaluation and consultation with a
18 health care provider regarding the anticipated pregnancy.

19 (t) "Parent" means an individual who has established a parent-child
20 relationship under this act or other law and includes, but is not limit-
21 ed to: (1) a child's birth parent who is not a gestational carrier or
22 the spouse of the gestational carrier; (2) a child's genetic parent who
23 is not the donor; (3) an individual who has legally adopted the child;
24 (4) an individual who is a parent of the child pursuant to a legal
25 presumption; (5) an individual who is a parent of the child pursuant to
26 an acknowledgment or judgment of parentage pursuant to article two of
27 this act or other law; (6) an individual who is a parent of the child
28 pursuant to article three, four, or six of this act.

29 (u) "Participant" means an individual who provides a biological or
30 genetic component of assisted reproduction or artificial insemination,
31 an intended parent, and the spouse of an intended parent or gestational
32 carrier. Gestation is a biological component within the meaning of this
33 definition.

34 (v) "Record" means information inscribed in a tangible medium or
35 stored in an electronic or other medium that is retrievable in perceiva-
36 ble form.

37 (w) "Retrieval" means the procurement of eggs or sperm from a gamete
38 provider.

39 (x) "Spouse" means an individual married to another, or who has a
40 legal relationship entered into under the laws of the United States or
41 of any state, local or foreign jurisdiction, which is substantially
42 equivalent to a marriage, including a civil union or domestic partner-
43 ship.

44 (y) "State" means a state of the United States, the District of Colum-
45 bia, Puerto Rico, the United States Virgin Islands, or any territory or
46 insular possession subject to the jurisdiction of the United States.

47 (z) "Time of transfer" means the time at which a gamete or embryo is
48 transferred into the body of a woman with the intent to produce live
49 birth.

50 (aa) "Transfer" means the placement of an embryo or gametes into the
51 body of a woman with the intent to achieve pregnancy and live birth.

52 PART 2

53 JUDGMENT OF PARENTAGE

54 Section 581-201. Judgment of parentage.

1 581-202. Proceeding for judgment of parentage of a child born
2 through assisted reproduction or artificial insemina-
3 tion.

4 581-203. Proceeding for judgment of parentage of a child born
5 pursuant to a gestational carrier arrangement.

6 581-204. Proceeding for judgment of parentage of a child whose
7 parentage is established pursuant to section 581-601
8 of this article.

9 581-205. Judgment of parentage for intended parents who are
10 spouses.

11 581-206. Jurisdiction.

12 § 581-201. Judgment of parentage. (a) A civil proceeding may be main-
13 tained to adjudicate the parentage of a child under the circumstances
14 set forth in this article. This proceeding is governed by the civil
15 practice law and rules.

16 (b) A judgment of parentage may be issued prior to birth but shall not
17 become effective until the birth of the child.

18 (c) A judgment of parentage shall be issued by the court (1) brought
19 pursuant to a proceeding authorized pursuant to parts three and four of
20 this act upon the petition of (i) a child, or (ii) a parent, or (iii) a
21 participant, or (iv) the support/enforcement agency or other govern-
22 mental agency authorized by other law, or (v) a representative author-
23 ized by law to act for an individual who would otherwise be entitled to
24 maintain a proceeding but who is deceased, incapacitated, or a minor, in
25 order to legally establish the child-parent relationship, (2) or in a
26 proceeding authorized pursuant to part six of this act upon the petition
27 of (i) a child, or (ii) a parent, or (iii) a person claiming to have
28 formed a parent-child relationship with a child under section 581-601 of
29 this article, under the following circumstances:

30 A. A child born through assisted reproduction or artificial insemina-
31 tion under part three of this article; or

32 B. A child born pursuant to a gestational carrier arrangement under
33 part four of this article; or

34 C. A child whose parentage can be established pursuant to part six of
35 this article.

36 § 581-202. Proceeding for judgment of parentage of a child born
37 through assisted reproduction or artificial insemination. (a) A
38 proceeding for a judgment of parentage may be commenced:

39 (1) if the intended parents reside in New York state, in the county
40 where the intended parents reside any time after pregnancy is achieved
41 or in the county where the child was born or resides; or

42 (2) if the intended parents and child do not reside in New York state,
43 up to ninety days after the birth of the child in the county where the
44 child is born.

45 (b) The petition for a judgment of parentage must be verified and
46 include the following:

47 (1) a statement that the intended parents have been residents of the
48 state for at least ninety days or if they are not New York state resi-
49 dents, the child was born in the state; and

50 (2) a statement from the gestating mother that she became pregnant as
51 a result of the donation of the gametes or embryos and a representation
52 of non-access during the time of conception; and

53 (3) a statement that the intended parents consented to assisted
54 reproduction or artificial insemination pursuant to section 581-304 of
55 this article; and

1 (4) where the gametes or embryos were received from a gamete or embryo
2 storage facility, an attached statement from the facility having custody
3 of the gametes or embryos demonstrating the donative intent of the
4 gamete or embryo donor.

5 (c) The following shall be deemed sufficient proof of a donor's dona-
6 tative intent:

7 (1) in the case of an anonymous donor, a statement from the gamete or
8 embryo storage facility with custody of the gametes or embryos that the
9 donor relinquished any parental or proprietary interest in the gametes
10 or embryos at the time of donation; and

11 (2) in the case of a donation from a known donor, a notarized state-
12 ment from the gamete or embryo donor acknowledging the donation and
13 confirming that the donors have no parental or proprietary interest in
14 the gametes or embryos. In the absence of a notarized statement from the
15 donor, the donor shall be served by mail at the donor's last known
16 address with notice of the proceeding. Failure to respond to said notice
17 shall be considered a default and no further notice shall be required.

18 (d) Where a petition demonstrates the consent of the intended parents
19 pursuant to section 581-304 of this article, the donative intent of the
20 gamete or embryo donors and that the pregnancy resulted from the
21 donation, the court shall issue a judgment of parentage:

22 (1) declaring, that upon the birth of the child, the intended parents
23 are the only legal parents of the child; and

24 (2) ordering the intended parents to assume sole responsibility for
25 the maintenance and support of the child immediately upon the birth of
26 the child; and

27 (3) ordering that upon the birth of the child, a copy of the judgment
28 of parentage be served on the (i) department of health or New York city
29 department of mental health and hygiene, or (ii) registrar of births in
30 the hospital where the child is born and directing that the hospital
31 report the parentage of the child to the appropriate department of
32 health in conformity with the court order. If an original birth certifi-
33 cate has already issued, the court shall issue an order directing the
34 appropriate department of health to amend the birth certificate in an
35 expedited manner and seal the previously issued birth certificate.

36 § 581-203. Proceeding for judgment of parentage of a child born pursu-
37 ant to a gestational carrier arrangement. (a) The proceeding may be
38 commenced at any time after the gestational agreement has been execu-
39 ted by all of the parties. Any party to the gestational agreement not join-
40 ing in the petition must be served with notice of the proceeding. Fail-
41 ure to respond to the notice shall be considered a default and no
42 further notice shall be required.

43 (b) The petition for a judgment of parentage must be verified and
44 include the following:

45 (1) A statement that the gestational carrier or the intended parents
46 have been residents of the state for at least ninety days at the time
47 the gestational agreement was executed; and

48 (2) A certification from the attorneys representing the petitioners
49 that the parties are eligible to participate in the gestational carrier
50 arrangement as required by section 581-404 of this article and that the
51 gestational agreement contains the required terms under section 581-405
52 of this article; and

53 (3) A statement that the parties entered into the gestational agree-
54 ment knowingly and voluntarily.

1 (c) Where a petition satisfies subdivision (b) of this section, the
2 court shall issue a judgment of parentage, without additional
3 proceedings or documentation:

4 (1) Declaring, that upon the birth of a child born during the term of
5 the gestational agreement, the intended parents are the legal parents of
6 the child; and

7 (2) Declaring, that upon the birth of a child born during the term of
8 the gestational agreement, the gestational carrier, and her spouse, if
9 any, are not the legal parents of the child; and

10 (3) Ordering the gestational carrier and her spouse, if any, to trans-
11 fer the child to the intended parents if this has not already occurred;
12 and

13 (4) Ordering the intended parents to assume sole responsibility for
14 the maintenance and support of the child immediately upon the birth of
15 the child; and

16 (5) Ordering that upon the birth of the child, a copy of the judgment
17 of parentage be served on the (i) department of health or New York city
18 department of mental health and hygiene, or (ii) registrar of births in
19 the hospital where the child is born and directing that the hospital
20 report the parentage of the child to the appropriate department of
21 health in conformity with the court order. If an original birth certif-
22 icate has already issued, the court shall issue an order directing the
23 appropriate department of health to amend the birth certificate in an
24 expedited manner and seal the previously issued birth certificate.

25 (d) The agreement of the intended parents to pay reasonable compen-
26 sation to the gestational carrier in excess of reasonable medical and
27 ancillary costs shall not be a bar to the issuance of a judgment of
28 parentage.

29 § 581-204. Proceeding for judgment of parentage of a child whose
30 parentage is established pursuant to section 581-601 of this article. A
31 proceeding for a judgment of parentage may be commenced by verified
32 petition to establish parentage under section 581-601 of this article at
33 any time in the county of residence of the child or of a parent, includ-
34 ing a person asserting to have formed a parent-child relationship with a
35 child under section 581-601 of this article. Upon a determination of
36 parentage under section 581-601 of this article, the court shall issue a
37 judgment of parentage declaring the parents of the child for all legal
38 purposes.

39 § 581-205. Judgment of parentage for intended parents who are spouses.
40 Notwithstanding or without limitation on presumptions of parentage that
41 apply, a judgment of parentage may be obtained under this part by
42 intended parents who are each other's spouse.

43 § 581-206. Jurisdiction. Proceedings pursuant to this article may be
44 instituted in the supreme, family or surrogate's court except for
45 proceedings pursuant to section 581-204 of this part may be instituted
46 in the supreme or family court.

47 PART 3

48 CHILD OF ASSISTED REPRODUCTION OR ARTIFICIAL INSEMINATION

49 Section 581-301. Scope of article.

50 581-302. Status of donor.

51 581-303. Parentage of child of assisted reproduction or artifi-
52 cial insemination.

53 581-304. Consent to assisted reproduction or artificial insemi-
54 nation.

1 581-305. Limitation on spouses' dispute of parentage of child of
2 assisted reproduction and artificial insemination.

3 581-306. Effect of dissolution of relationship of spouses or
4 withdrawal of consent.

5 581-307. Effect of death of intended parent.

6 § 581-301. Scope of article. This article does not apply to the birth
7 of a child conceived by means of sexual intercourse.

8 § 581-302. Status of donor. A donor is not a parent of a child
9 conceived by means of assisted reproduction or artificial insemination
10 except as provided in section 581-303 of this part.

11 § 581-303. Parentage of child of assisted reproduction or artificial
12 insemination. (a) An individual who provides gametes for assisted
13 reproduction or artificial insemination with the intent to be a parent
14 of the child, or consents to assisted reproduction or artificial insemi-
15 nation as provided in section 581-304 of this part, is a parent of the
16 resulting child for all legal purposes.

17 (b) Upon application by any participant, the court shall issue a judg-
18 ment of parentage to any participant who is a parent pursuant to this
19 act.

20 § 581-304. Consent to assisted reproduction or artificial insemina-
21 tion. (a) Where the intended parent who gives birth to a child by means
22 of assisted reproduction or artificial insemination is a spouse, the
23 consent of both spouses to the assisted reproduction or artificial inse-
24 mination is presumed and neither spouse may challenge the parentage of
25 the child, except as provided in section 581-305 of this part.

26 (b) Consent to assisted reproduction or artificial insemination by an
27 individual who intends to be a parent and is not the spouse of the
28 intended parent who gives birth to a child by means of assisted repro-
29 duction or artificial insemination must be in a signed record which
30 acknowledges the intended parents' joint participation and intention to
31 parent together.

32 (c) The failure of a person to sign a record evidencing his/her
33 consent as provided in subdivision (b) of this section shall not
34 preclude a finding that such consent existed if the court finds by clear
35 and convincing evidence that at the time of the child's conception or
36 birth, both the intended parent who gives birth to the child and such
37 person resided in the same household as intimate partners, and held
38 themselves and each other out as the parents of the intended child.

39 § 581-305. Limitation on spouses' dispute of parentage of child of
40 assisted reproduction and artificial insemination. (a) Except as other-
41 wise provided in subdivision (b) of this section, neither spouse may
42 challenge the presumption of parentage of the child unless:

43 (1) Within two years after learning of the birth of the child a
44 proceeding is commenced to adjudicate parentage; and

45 (2) The court finds by clear and convincing evidence that either
46 spouse did not consent for the non-gestating spouse to be a parent of
47 the child.

48 (b) A proceeding for a judgment of parentage may be maintained at any
49 time if the court determines that:

50 (1) The spouse did not provide gametes for, or consent to, assisted
51 reproduction or artificial insemination by the individual who gave
52 birth; and

53 (2) The spouse and the individual who gave birth have not cohabited
54 since the spouse knew or had reason to know of the pregnancy; and

55 (3) The spouse never openly held out the child as his or her own.

1 (c) The limitation provided in this section applies to a spousal
2 relationship that has been declared invalid after assisted reproduction
3 or artificial insemination.

4 § 581-306. Effect of dissolution of relationship of spouses or with-
5 drawal of consent. If the relationship of spouses is dissolved before
6 transfer of eggs, sperm, or embryos, the consent of both spouses to the
7 use of the gametes or the transfer of embryos is required if the spouses
8 have joint custody and control of the gametes or embryos. However, if
9 there is a signed record assigning custody and control of the gametes or
10 embryos to one spouse, that spouse may use or transfer said gametes or
11 embryos without the consent of the former spouse. The former spouse is
12 not a parent of the resulting child unless the former spouse consented
13 in a record that if assisted reproduction or artificial insemination
14 were to occur after a divorce or dissolution of the relationship, the
15 former spouse would be a parent of the child.

16 § 581-307. Effect of death of intended parent. Except as otherwise
17 provided in the estates, powers and trusts law, if an individual who
18 consented in a record to be a parent by assisted reproduction or artifi-
19 cial insemination dies before the transfer of eggs, sperm, or embryos,
20 the deceased individual is not a parent of the resulting child unless
21 the deceased individual consented in a signed record that if assisted
22 reproduction or artificial insemination were to occur after death, the
23 deceased individual would be a parent of the child.

24 PART 4

25 GESTATIONAL AGREEMENT

26 Section 581-401. Gestational agreement authorized.

27 581-404. Eligibility.

28 581-405. Requirements of gestational agreement.

29 581-406. Termination of gestational agreement.

30 581-407. Gestational agreement: effect of subsequent spousal
31 relationship.

32 581-408. Failure to obtain a judgment of parentage.

33 581-409. Dispute as to gestational agreement.

34 581-410. Inspection of records.

35 581-411. Exclusive, continuing jurisdiction.

36 § 581-401. Gestational agreement authorized. (a) If eligible under
37 this article to enter into a gestational agreement, a gestational carri-
38 er, her spouse if applicable, and the intended parents may enter into a
39 gestational agreement which will be enforceable provided the gestational
40 agreement meets the requirements of this article.

41 (b) A gestational agreement shall not apply to the birth of a child
42 conceived by means of sexual intercourse.

43 (c) A gestational agreement may provide for payment of compensation
44 under part five of this article.

45 (d) A gestational agreement may not limit the right of the gestational
46 carrier to make decisions to safeguard her health.

47 § 581-404. Eligibility. (a) A gestational carrier shall be eligible
48 to enter into an enforceable gestational agreement under this article if
49 she has met the following requirements at the time the gestational
50 agreement is executed:

51 (1) She is at least twenty-one years of age; and

52 (2) She has completed a medical evaluation with a health care practi-
53 tioner relating to the anticipated pregnancy; and

1 (3) She has undergone legal consultation with independent legal coun-
2 sel regarding the terms of the gestational agreement and the potential
3 legal consequences of the gestational carrier arrangement; and

4 (4) She has, or the gestational agreement stipulates that prior to the
5 embryo transfer, she will obtain, a health insurance policy that covers
6 major medical treatments and hospitalization, and the health insurance
7 policy has a term that extends throughout the duration of the expected
8 pregnancy and for eight weeks after the birth of the child; the policy
9 may be procured and paid for by the intended parents on behalf of the
10 gestational carrier pursuant to the gestational agreement.

11 (b) The intended parents shall be eligible to enter into an enforcea-
12 ble gestational agreement under this article if he, she, or they have
13 met the following requirements at the time the gestational agreement was
14 executed:

15 (1) He, she, or they have undergone legal consultation with independ-
16 ent legal counsel regarding the terms of the gestational agreement and
17 the potential legal consequences of the gestational carrier arrangement;
18 and

19 (2) He or she is an adult person who is not in a spousal relationship,
20 or adult spouses together, or any two adults who are intimate partners
21 together, except where the intended parent and his or her spouse:

22 (i) are living separate and apart pursuant to a decree or judgment of
23 separation or pursuant to a written agreement of separation subscribed
24 by the parties thereto and acknowledged or proved in the form required
25 to entitle a deed to be recorded; or

26 (ii) have been living separate and apart for at least three years
27 prior to execution of the gestational agreement, then the spouse of the
28 intended parent is not required to be a party to the gestational agree-
29 ment and shall not have parental rights or obligations to the child.

30 § 581-405. Requirements of gestational agreement. (a) A gestational
31 agreement shall be deemed to have satisfied the requirements of this
32 article and be enforceable if it meets the following requirements:

33 (1) It shall be in a signed record verified by the intended parents,
34 the gestational carrier, and her spouse, if any; and

35 (2) It shall be executed prior to the commencement of any medical
36 procedures in furtherance of the gestational carrier arrangement other
37 than medical evaluations necessary to determine eligibility of the
38 parties pursuant to section 581-404 of this part; and

39 (3) It shall be executed by a gestational carrier meeting the eligi-
40 bility requirements of subdivision (a) of section 581-404 of this part
41 and by the gestational carrier's spouse, if any; and

42 (4) It shall be executed by intended parents meeting the eligibility
43 requirements of subdivision (b) of section 581-404 of this part; and

44 (5) The gestational carrier and the intended parents shall have been
45 represented by separate, independent counsel in all matters concerning
46 the gestational carrier arrangement and the gestational agreement; and

47 (6) If the gestational agreement provides for the payment of compen-
48 sation to the gestational carrier, the compensation shall have been
49 placed in escrow with an independent escrow agent prior to the gesta-
50 tional carrier's commencement of any medical procedure other than
51 medical evaluations necessary to determine the gestational carrier's
52 eligibility; and

53 (7) The gestational agreement must include the following terms:

54 (i) As to the gestational carrier and her spouse, if any:

55 (A) the agreement of the gestational carrier to undergo embryo trans-
56 fer and attempt to carry and give birth to the child; and

1 (B) the agreement of the gestational carrier and her spouse, if any,
2 to surrender custody of all resulting children to the intended parents
3 immediately upon the birth; and

4 (C) the right of the gestational carrier to utilize the services of a
5 health care practitioner of her choosing, after consultation with the
6 intended parents, to provide her care during the pregnancy; and

7 (ii) As to the intended parent or parents:

8 (A) the agreement to accept custody of all resulting children imme-
9 diately upon birth regardless of number, gender, or mental or physical
10 condition; and

11 (B) the agreement to assume sole responsibility for the support of the
12 children immediately upon the children's birth; and

13 (C) the agreement that the rights and obligations of the intended
14 parent or parents under the gestational agreement are not assignable.

15 § 581-406. Termination of gestational agreement. (a) After issuance
16 of a judgment of parentage pursuant to section 581-203 of this article,
17 but before the gestational carrier becomes pregnant by means of assisted
18 reproduction, the gestational carrier, her spouse, if any, or either of
19 the intended parents may terminate the gestational agreement by giving
20 notice of termination in a record to all other parties and any liability
21 resulting therefrom will be determined pursuant to section 581-408 of
22 this part.

23 (b) An individual who terminates a gestational agreement under this
24 section shall file notice of the termination with the court. On receipt
25 of the notice, the court shall vacate the judgment of parentage issued
26 under this article.

27 § 581-407. Gestational agreement: effect of subsequent spousal
28 relationship. After the execution of a gestational agreement under this
29 article, the subsequent spousal relationship of the gestational carrier
30 does not affect the validity of a gestational agreement, her spouse's
31 consent to the agreement shall not be required, and her spouse shall not
32 be the presumed parent of the resulting child.

33 § 581-408. Failure to obtain a judgment of parentage. Where the
34 intended parents or the gestational carrier fail to obtain a judgment of
35 parentage pursuant to section 581-203 of this article, the parentage of
36 a child born as the result of a gestational carrier arrangement will be
37 determined based on the best interests of the child taking into account
38 genetics and the intent of the parties.

39 § 581-409. Dispute as to gestational agreement. (a) Any dispute which
40 is related to a gestational agreement other than disputes as to parent-
41 age shall be resolved by the supreme court, which shall determine the
42 respective rights and obligations of the parties. If a gestational
43 agreement does not meet the requirements of this article, the agreement
44 is not enforceable.

45 (b) Except as expressly provided in the gestational agreement, the
46 intended parent or parents and gestational carrier shall be entitled to
47 all remedies available at law or equity in any dispute related to the
48 gestational agreement.

49 (c) There shall be no specific performance remedy available for a
50 breach by the gestational carrier of a gestational agreement term that
51 requires her to be impregnated.

52 § 581-410. Inspection of records. The proceedings, records, and iden-
53 tities of the individual parties to a gestational agreement under this
54 article shall be sealed except upon the petition of the parties to the
55 gestational agreement or the child born as a result of the gestational
56 carrier arrangement.

1 § 581-411. Exclusive, continuing jurisdiction. Subject to the juris-
2 ditional standards of section seventy-six of the domestic relations
3 law, the court conducting a proceeding under this article has exclusive,
4 continuing jurisdiction of all matters arising out of the gestational
5 agreement until a child born to the gestational carrier during the peri-
6 od governed by the agreement attains the age of one hundred eighty days.

7 PART 5

8 PAYMENT TO DONORS AND GESTATIONAL CARRIERS

9 Section 581-501. Reimbursement.

10 581-502. Compensation.

11 § 581-501. Reimbursement. (a) A donor who has entered into a valid
12 agreement to be a donor, may receive reimbursement from an intended
13 parent or parents for economic losses incurred in connection with the
14 donation which result from the retrieval or storage of gametes or embr-
15 yos.

16 (b) Premiums paid for insurance against economic losses directly
17 resulting from the retrieval or storage of gametes or embryos for
18 donation may be reimbursed.

19 § 581-502. Compensation. (a) Compensation may be paid to a donor or
20 gestational carrier based on services rendered, expenses that have been
21 or will be incurred, time, and inconvenience. Under no circumstances may
22 compensation be paid to purchase gametes or embryos or to pay for the
23 relinquishment of a parental interest in a child.

24 (b) The compensation, if any, paid to a donor or gestational carrier
25 must be reasonable and negotiated in good faith between the parties, and
26 said payments to a gestational carrier shall not exceed the duration of
27 the pregnancy and recuperative period of up to eight weeks after the
28 birth of the child.

29 (c) Compensation may not be conditioned upon the purported quality or
30 genome-related traits of the gametes or embryos.

31 (d) Compensation may not be conditioned on actual genotypic or pheno-
32 typic characteristics of the donor or of the child.

33 PART 6

34 FORMATION OF LEGAL PARENT-CHILD RELATIONSHIP AFTER BIRTH OF CHILD

35 Section 581-601. Determination of parenthood.

36 § 581-601. Determination of parenthood. (a) A person seeking to qual-
37 ify for a judgment of parentage under this part is referred to herein as
38 "putative parent".

39 (b) The court shall issue a judgment of parentage to a petitioner who
40 demonstrates the following by clear and convincing evidence:

41 (1) Any parent or parents of a child consented to the putative
42 parent's formation of a parent-child relationship with the child, such
43 consent to be expressed in written form, including but not limited to,
44 any of the following examples: a signed letter agreement, an executed
45 contract, a birth announcement, a religious ceremony document, or a
46 school or medical record; and

47 (2) The putative parent resided in the same household with the child
48 for a length of time sufficient, given the age of the child, to have
49 established with the child a bonded, dependent relationship parental in
50 nature; and

51 (3) The putative parent performed parental functions for the child to
52 a significant degree; and

53 (4) The putative parent formed a parent-child bond with the child; and

54 (5) Such judgment is in the best interest of the child.

1 (c) A putative parent under this part shall not include a grandparent
2 of such minor child, a person whose relationship with the child is based
3 on payment by the parent, or a person who has not at any time been an
4 intimate partner with a parent of the child.

5 (d) The court shall appoint an attorney for the child to represent a
6 minor who is the subject of the proceeding.

7 (e) A parent's withdrawal of consent to the parent-child relationship
8 subsequent to the occurrence of the factors in paragraphs one through
9 five of subdivision (b) of this section shall not change the legal
10 parental status or rights of the putative parent qualifying under this
11 part.

12 (f) The putative parent qualifying as a parent under this section
13 shall be deemed to be the legal parent of such child for all purposes.

14 (g) A judgment of parentage shall be issued pursuant to section
15 581-204 of this article confirming establishment of a parent-child
16 relationship as provided in this part.

17 PART 7

18 MISCELLANEOUS PROVISIONS

19 Section 581-701. Remedial.

20 581-702. Severability.

21 581-703. Parent under section seventy of the domestic relations
22 law.

23 § 581-701. Remedial. This legislation is hereby declared to be a
24 remedial statute and is to be construed liberally to secure the benefi-
25 cial interests and purposes thereof for the best interests of the child.

26 § 581-702. Severability. The invalidation of any part of this legis-
27 lation by a court of competent jurisdiction shall not result in the
28 invalidation of any other part.

29 § 581-703. Parent under section seventy of the domestic relations law.
30 The term "parent" in section seventy of the domestic relations law shall
31 include a person established to be a parent under this article or any
32 other relevant law.

33 § 2. Section 73 of the domestic relations law is REPEALED.

34 § 3. Article 8 of the domestic relations law is REPEALED.

35 § 4. This act shall take effect on the one hundred twentieth day after
36 it shall have become a law. Effective immediately, the addition, amend-
37 ment and/or repeal of any rule or regulation necessary for the implemen-
38 tation of this act on its effective date is authorized to be made on or
39 before such date.